IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3663 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE CO-OPERATIVE MARKETING FEDERATION LTD.

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3663 of 2001

MR KS JHAVERI for Petitioner No. 1-3

Mr. I.M.Pandya, ASSTT.GOVERNMENT PLEADER for Respondent Nos. 1 to 3.

RULE SERVED BY DS for Respondent No. 4.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 30/08/2001

ORAL JUDGEMENT

This petition has been filed for quashing and setting aside the order dated 23.5.2000 passed by the

respondent no. 3 initiating inquiry under section 93 of the Co-operative Societies Act,1961 (hereinafter referred to as the "Act") and appointing respondent no 4 as Inquiry Officer and for a direction not to proceed further with the inquiry initiated under section 93 of the Act.

2. Heard the learned counsel for the parties. It is stated by the learned counsel for the petitioners that the respondent no. 3 Joint Registrar (Commercial) is one of the Directors of the petitioner no.1 Federation. He participated in the proceedings and thereafter on the audit report, he passed the order for initiation of proceedings under section 93 of the Act and appointed respondent no. 4 as Inquiry Officer. The contention of the learned counsel for the petitioners is that section 93 of the Act requires that any person who has taken any part in the organisation or management of the society or any deceased or past or present officer of the society, had within a period of five years prior to the date of such audit, inquiry, inspection or order, for winding up misapplied or retained or become liable or accountable for any money or property of the society or has been guilty of misfeasance or breach of trust in relation to the society etc. According to him, the proceedings ought to have been initiated within a period of five years, but in the instant case, the proceedings have been directed to be taken after a period of about 14 years. As such, no proceedings under section 93 of the Act can be taken against the petitioners after a period of five years. The next contention of the learned counsel for the petitioners is that the respondent no. 3 Joint Registrar, (Commercial), who has passed the order for initiating proceedings under section 93 of the Act and appointing respondent no. 4 as Inquiry Officer, had been one of the directors of the petitioner no.1 Federation. Once the respondent no. 3 has taken part in the meetings of the petitioner Federation, he cannot appoint the Inquiry Officer for his own cause on the basis of the audit report etc. In this regard, he also relied on the decision of this Court in the case of Gujarat State Co-operative Marketing Federation Ltd. vs. V.H.Parekh and another reported in 1995(1) GLH,857, wherein this court found force in the contention that the impugned decision of the respondents directing the initiation of proceedings under section 85 of the Act is illegal as the respondent is incompetent as he has been acting as a Judge of his own cause and that decision is based on the decision of the Division Bench of this Court in Special Civil Application no. 865 of 1972 decided on November 15, 1972 which was allowed and the impugned

order passed by the District Registrar was quashed and set aside.

3. As against this, the learned Assistant Government Pleader contended that the action of the respondent no. 3 is not illegal. If any order has been passed, that order can be challenged by way of an appeal under section 153(3) of the Act which provides that an appeal against the order or decision under sections 82, 90 and 93 and any order passed by the Registrar for paying compensation to a society, and any other order for which an appeal to the Tribunal has been provided under this Act, shall lie to the Tribunal. In reply to this contention of the learned Assistant Government Pleader, the learned counsel for the petitioners submitted that the impugned order passed by the respondent no. 3 is for initiation of inquiry and the appointment of the Inquiry Officer. That order cannot be said to be an appealable order as it is only for initiation of proceedings or appointment of inquiry Officer. As such, the provisions of appeal are not attracted.

4. I have carefully considered the contentions of the learned counsel for the parties. In the present case, the order has been passed by the respondent no. 3 for initiating inquiry. The respondent no. 3 had participated as a Director of the petitioner Federation. Once any officer has taken part in the proceedings or in the meeting of any Federation as a director, he would be incompetent to take action against the petitioner Federation on audit report. As such, that order cannot be said to be an appealable order as by that order, he himself directed for intiation of proceedings of inquiry and he also appointed respondent no. 4 as Inquiry Officer. Even if it is assumed for the sake of argument that an appeal may lie against that order, then also the origin of the proceedings had been challenged as without jurisdiction. This writ petition is, therefore, entertainable and appropriate orders can be passed. In the present case, the respondent no. 3 being one of the directors of the petitioner Federation had taken part in the meetings and participates in the proceedings and so he cannot take action in which he himself is a party. Therefore, the impugned order passed by the respondetn no. 3 initiating proceedings under section 93 of the Act and appointing the respondent no. 4 as Inquiry Officer is illegal and unsustainable in the eye of law.

5. In the facts and circumstances of the case, this petition deserves to be allowed and accordingly the petition is allowed. The order dated

23rd May, 2000 passed by the respondent no. 3 is hereby quashed and set aside. However, competent authority is at liberty to take appropriate action in accordance with law against the petitioners. Rule is made absolute accordingly with no order as to costs.

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